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FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

Tariff Filing Requirements for  
Nondominant Common Carriers

CC Docket No. 93-36

COMMENTS OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments pursuant to the Notice of Proposed Rulemaking, FCC 93-103, released on February 19, 1993. The Commission is considering rules to govern the tariff filing requirements for the interstate services of nondominant carriers.

NTCA is a national association of approximately 500 small local exchange carriers ("LECs") providing telecommunications services to interexchange carriers and subscribers throughout rural America. Some NTCA members provide services that were previously subject to the "forbearance" policy vacated by the court in AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), rehearing denied, January 21, 1993. These forborne carriers' services include, among others, the provision of interstate paging and cellular services and the resale of interstate toll service.

DISCUSSION

The Commission proposes, among other things, to reduce tariff filing requirements for nondominant carriers by allowing these carriers to state in their tariffs either a maximum rate or a range of rates. It also proposes to reduce the current fourteen-day notice period to one day and to modify substantially

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the tariff form requirements for nondominant carriers.

NTCA is in favor of Commission efforts to reduce regulatory burdens and adjust regulatory policy to allow carriers to meet the exigencies of competition, particularly those which adversely affect small companies. However, it urges the Commission to balance the need for simplification in this matter with the need to frame rule changes that conform to the requirements of Section 203 of the Communications Act as interpreted by the Court in AT&T v. FCC.<sup>1</sup> This balance is necessary to avoid further unnecessary litigation over the forbearance policy, to create a stable environment in which carriers know what rules they are governed by and to assure that nondominant carriers do not remain vulnerable to damage suits as a result of filings that fall short of the requirements of the Act.

In this regard, the Commission should note that Bell Atlantic has already challenged the legality of a Teleport tariff providing for a minimum to maximum rate range similar to the type of tariff the Commission's proposal would allow.<sup>2</sup> Bell Atlantic's challenge correctly points out that Section 203(c) of

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<sup>1</sup> Despite its concerns about the lawfulness of the Commission's proposal to allow tariff filings with rate ranges, NTCA believes the Commission's efforts to reduce paperwork and simplify tariff form requirements have merits, i.e., floppy disk filing, optionality with respect to language used in transmittal letter and in changes, charges, classifications, practices and regulations.

<sup>2</sup> Bell Atlantic is challenging Teleport Communications Group Operating Companies--Tariff FCC No. 1, in a February 18, 1993, Petition to Reject Or, in the Alternative, Motion for an Order to Show Cause.

the Act requires a carrier to charge the rate "specified" in its tariffs. It also notes that Section 205(a) allows the Commission to prescribe maximum and minimum rate levels for a carrier. This authority, however, does not relieve the carrier of the requirement to file tariffs specifying exact charges.

The specification of charges necessary to accomplish the purposes of Section 203. The Commission has long recognized that the underlying purpose of Section 203 is to prevent discrimination. See, e.g., Re American Telephone & Telegraph Company 42 F.C.C.2d 654, 659 (1973). Section 203 adapted Section 6 of the Interstate Commerce Act ("ICA"). The legislative history and judicial interpretation of Section 6 of the ICA are rooted in a recognition that publication of the one legal rate is aimed at preventing carriers from discriminating by charging unequal or different rates for the same service. See Robinson, The Federal Communications Act: An Essay On Origins and Regulatory Purpose in A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934, 32-33 (M. D. Paglin ed. 1989).

While this legislative history and precedent limit the Commission's options with respect to forbearance of its tariff filing requirements, the public has benefitted from the forbearance policy. In the case of NTCA members, for example, the policy has allowed small exchange carriers offering interstate resale or interstate cellular services to do so without the necessity of conforming to the burdensome Part 61 requirements imposed on AT&T. As a result, these carriers have

been able to respond quickly to market changes and public demands for service and have also avoided the administrative costs associated with filings.

In view of these public benefits, NTCA urges the Commission to seek necessary legislative changes so that the forbearance policy previously applied to the services of its members can be retained. The decisions in MCI v. FCC, 765 F.2d 1186, (D.C. Cir. 1985), AT&T v. FCC, and other precedent leave little room for the type of flexibility contained in the proposed rules.<sup>3</sup>

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<sup>3</sup> While the Commission is not proposing to eliminate the tariff filing requirement here, only the specificity requirement, it is instructive to note that the court in MCI admonished, "However reasonable the Commission's assessment, [that the competitive marketplace in almost all cases was sufficient to assure just and reasonable rates] we are not at liberty to release the agency from the tie that binds it to the text Congress enacted." 768 F.2d at 1186.

CONCLUSION

For the above stated reasons, NTCA urges the Commission to seek congressional authority to permit detariffing of certain nondominant carrier services.

Respectfully submitted,

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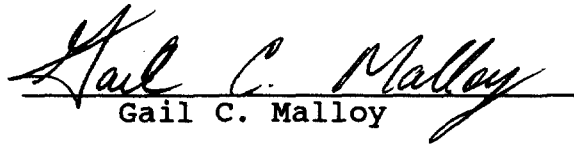
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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing  
Comments of the National Telephone Cooperative Association in  
CC Docket No. 93-36 was served on this 29th day of March 1993, by  
first-class, U.S. Mail, postage prepaid, to the following persons  
on the attached list:

  
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